

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

SETH WILLIAMS,	:	CASE NO. 1:11-CV-0046
	:	
Petitioner	:	(Judge Caldwell)
v.	:	
	:	(Magistrate Judge Smyser)
DOMINIC DEROSA,	:	
	:	
Respondent	:	

REPORT AND RECOMMENDATION

Seth Williams was ordered detained pending trial by Order of December 7, 2010 in *United States v. Williams*, M.D. Pa. Crim. No. 1:10-CR-0341-YK. He has filed this 28 U.S.C. § 2241 habeas corpus petition seeking an order releasing him from custody on grounds including the Eighth Amendment right to bail, alleged procedural violations by police and innocence.

Petitioner Williams did not seek a review of the detention Order of December 7, 2010 by the assigned district court judge, according to the docket in his criminal case. Instead, he collaterally challenges that Order by this habeas petition.

The use of 28 U.S.C. § 2241 to collaterally challenge an order of pretrial detention in a federal criminal case is not

consistent with 18 U.S.C. § 3142, et seq., which allocates the matters of pretrial release and pretrial detention in a criminal case to the process of that criminal case including the process for a review of the order of a magistrate judge that the defendant be held in pretrial detention. A person in criminal pretrial custody like a person in criminal post-trial custody proceeding under 28 U.S.C. § 2241 must have exhausted his remedy in the criminal proceeding itself before the person may challenge the legality of his custody in a habeas corpus proceeding, unless there is not any available remedy within the criminal process. *Stack v. Boyle*, 342 U.S. 1,5 (1951); *Moore v. U.S.*, 875 F. Supp. 620, 623 (D. Nebraska 1994). Under 18 U.S.C. Chapter 207 - Release and Detention Pending Judicial Proceedings, §§ 3141 et seq., there are established processes for challenging detention orders. See 18 U.S.C. § 3145.

Not having exhausted his criminal proceeding remedies, the petitioner may not proceed under 28 U.S.C. § 2241.

It is recommended that the petition be dismissed.

/s/ J. Andrew Smyser
J. Andrew Smyser
Magistrate Judge

Dated: January 26, 2011.